

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

IN RE: BAIR HUGGER FORCED AIR      MDL No.: 15-md-02666 (JNE/FLN)  
WARMING PRODUCT LIABILITY  
LITIGATION

This Document Relates To:

JOHN SUCHAN,

Civil Action No.: 17-CV-02452-JNE-FLN

Plaintiff,

---

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, John Suchan, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1068], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In July of 2015, Mr. John Suchan contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery.
3. On July 3, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Phone calls by Kennedy Hodges staff to Mr. Suchan went unanswered on the following dates: July 3, 2017, September 11, 2017, and October 26, 2017.
5. Additionally, written correspondence requesting that Mr. Suchan contact Kennedy Hodges was sent on the following dates: July 3, 2017, July 31, 2017, September 26, 2017, and October 26, 2017.
6. On November 3, 2017, staff at Kennedy Hodges received a voicemail from Ms. Anne Suchan, the daughter of Mr. Suchan. In the voicemail, she informed counsel that Mr. Suchan had passed. Ms. Suchan did not answer when staff attempted to contact her later that day.
7. A Suggestion of Death regarding the passing of Mr. Suchan has recently been filed with the Court in compliance with PTO 23. [17-cv-02452, Dkt. 6].
8. Attempts continued to contact Ms. Suchan after being informed of Mr. Suchan's death. Phone calls placed by Kennedy Hodges staff to her went unanswered on the following dates: November 14, 2017, November 17, 2017, December 13, 2017, January 31, 2018, and February 6, 2018.
9. Written correspondence requesting that Ms. Suchan contact Kennedy Hodges was sent on November 14, 2017 and January 31, 2018.
10. While counsel has diligently continued efforts to obtain the necessary information and authority to move forward from Ms. Suchan for several months, those efforts have not been successful to date.

11. As a result, counsel has not been able to provide information for or obtain the necessary permission and authorization from a representative of the estate to complete and submit an amended Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Ms. Suchan or any other potential representative of Mr. Suchan's estate be given an additional sixty (60) days to contact counsel in order to provide the necessary information for and permission and authorization to complete and submit an amended Plaintiff Fact Sheet for this claim.

Dated: February 8, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges  
David W. Hodges  
dhodges@kennedyhodges.com  
Gabriel A. Assaad  
gassaad@kennedyhodges.com  
4409 Montrose Blvd. Ste 200  
Houston, TX 77006  
Telephone: (713) 523-0001  
Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that on February 8, 2018 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges  
David W. Hodges